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Safeguarding Intangible Cultural Heritage and the environment

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The Convention for the Safeguarding of the Intangible Cultural Heritage (hereafter known as the Convention) was adopted within the framework of UNESCO in October 2003. Article 2 of the Convention establishes that intangible cultural heritage (ICH) must be compatible with sustainable development. Sustainable development in relation to culture consists of three intertwined dimensions: society, environment, and economy. Chapter 6 of the Operational Directives for the Implementation of this Convention establishes a framework related to "environmental sustainability". The framework consists of three pillars. The first pillar relates to "environmental impacts in the safeguarding of intangible cultural heritage". The second pillar relates to "knowledge and practices concerning nature and the universe". The final pillar concerns "community-based resilience to natural disasters and climate change". Through analysis of the Convention, the Convention's Operational Directives and elements of intangible cultural heritage inscribed on the Representative List of the Convention, this article will provide case studies where, in line with these pillars, intellectual property rights, particularly geographical indications, aim to support environmentally friendly practices. In so doing, this article will also seek to show that intellectual property rights can recognise communities as bearers of knowledge about nature and as essential actors in sustaining the environment. Indeed, this work will suggest that although intellectual property rights, if not carefully drafted, can pose risks for environmental sustainability, when correctly adopted they have the capacity to empower communities. Thus, the aim of this work is to show how intellectual property rights can be tools to facilitate safeguarding and sustainability for both intangible cultural heritage and the environment.

Keywords: cultural heritage, environmental sustainability, intellectual property rights, UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage, intangible cultural heritage, community.

Introduction

The Convention for the Safeguarding of the Intangible Cultural Heritage (ICH) was adopted within the framework of UNESCO in October 2003 (2003 Convention). Article 2 of the Convention establishes that ICH must be compatible with sustainable development[1]. Sustainable development consists of three intertwined dimensions: society, environment and economy.

Chapter 6 of the Operational Directives for the Implementation of this Convention (OD) establish a framework related to "environmental sustainability" (Para. 188 OD)[2].

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[1] Convention for the Safeguarding of the Intangible Cultural Heritage, adopted on 17 August 2003. Available at: https://ich.unesco.org/en/convention (accessed: 08.07.2019).

[2] Operational Directives for the Implementation of the Convention of the Safeguarding of the Intangible Cultural Heritage, adopted on 19 June 2008 and last updated on 6 June 2018 // UNESCO. Available at: https://ich.unesco.org/doc/src/ICH-Operational_Directives-7.GA-PDF-EN.pdf (accessed: 08.07.2019).

The framework consists of three pillars. The first pillar is the recognition by States Parties of "environmental impacts in the safeguarding of intangible cultural heritage" (Para. 190 OD). As part of this theme, States should also encourage "environmentally friendly practices" and "mitigate any possible harmful impacts" (Para. 190 OD). The second pillar, "knowledge and practices concerning nature and the universe" (Convention for the Safeguarding of the Intangible Cultural Heritage. Art. 2.2(d)), encourages the recognition of "communities, groups and individuals as the bearers of knowledge about nature and the universe and as essential actors in sustaining the environment" (Para. 189 OD). The third and final "pillar" of this framework relates to "community-based resilience to natural disasters and climate change" (Ch. VI.3.3 OD), according to which States Parties should "fully integrate communities, groups and individuals who are bearers of such knowledge into systems and programmes of disaster risk reduction, disaster recovery and climate change adaptation and mitigation" (Para. 191(c.ii) OD).

The purpose of this paper is to evaluate the relationship between intangible cultural heritage, intellectual property and environmental sustainability. Previous research in this field, such as Janet Blake's chapter "Cultural Heritage and the Environment"[3] has addressed the common ground shared by environmental and intangible cultural heritage interests, while Lucas Lixinski's *International Heritage Law for Communities: Exclusion and Re-Imagination*[4] provides a more critical evaluation of the relationships between intangible cultural heritage and sustainable development. This paper seeks to build on such past research and focus on the positive relationships between environmental and intangible cultural heritage interests. It also seeks to address the role of intellectual property rights as practical mechanisms that can facilitate the mutual sustainability of both environment and intangible cultural heritage. The approach of this paper is to establish a framework for environmental sustainability in an intangible cultural heritage context. This framework shall be derived principally from the 2003 Convention and its Operational Directives, as detailed in this introduction, as well as case studies of elements inscribed on the Representative List of the 2003 Convention. Once this framework has been established, this paper will then investigate the ways in which intellectual property rights can support environmental sustainability.

1. Intangible Cultural Heritage and sustainable environmental development

The contribution of ICH to environmental sustainability is recognised in many fields such as biodiversity conservation, sustainable natural resource management and natural disaster preparedness and response. As a living heritage, the body of knowledge, values and practices of intangible cultural heritage related to environment has the capacity to evolve and adapt for a more sustainable use of natural resources when necessary, permitting communities to better face natural disasters and the challenges of climate change. Furthermore, indigenous and local communities play a central role in the conservation and sustainable use of biological diversity[5]. In Kenya, for example, Kikuyu women are central to the breeding of food crops and the preservation of seeds. While human activities are consuming natural resources at increasing and unsustainable rates at the global level,

[3] *Blake J.* International Cultural Heritage Law. Oxford: Oxford University Press, 2015.

[4] *Lixinski L.* International Heritage Law for Communities: Exclusion and Re-Imagination. Oxford: Oxford University Press, 2019.

[5] *Blake J., Lixinski L.* The 2003 UNESCO Intangible Heritage Convention: A Commentary. Oxford: Oxford University Press, 2020. P. 124–127.

many local communities have developed lifestyles and intangible cultural heritage practices that are intricately linked to nature and that respect the environment[6].

Further to the second pillar concerning "knowledge and practices concerning nature and the universe", State Parties are encouraged to "recognize communities, groups and individuals as the bearers of knowledge about nature and the universe and as essential actors in sustaining the environment" (Para. 189 (a) OD). Further, this recognition must include that which is "conducted by the communities and groups themselves, aimed at understanding systems of biodiversity conservation, natural resource management and sustainable resource use, that are recognized by communities, groups and, in some cases, individuals as part of their intangible cultural heritage" (Para. 189 (b) OD). Additionally, while this traditional knowledge must be accessible and transmitted for the purposes of "international cooperation" (Para. 189 (b) OD), "customary practices governing access to specific aspects of it" and the "natural spaces whose existence is necessary for expressing the intangible cultural heritage" must be continually preserved (Para. 189 (c) OD).

Additionally, States Parties are instructed to "recognize the potential and actual environmental impacts of intangible cultural heritage practices and safeguarding activities, with particular attention to the possible consequences of their intensification" by supporting community-based studies of these impacts and encouraging "environmentally friendly practices and to mitigate any possible harmful impacts" (Para. 190 OD).

Lastly, and following the same framework of community engagement and protection, along with dissemination of the traditional knowledge and practices concerning the environment that is respectful of the groups and communities involved, State Parties must recognise "knowledge and practices concerning geoscience, particularly the climate", and "harness their potential to contribute to the reduction of risk, recovery from natural disasters, particularly through the strengthening of social cohesion and mitigation of climate change impacts" (Para. 191 OD). In order to accomplish the successful recognition and implementation of these efforts, in line with pillar three, State Parties are also instructed to "fully integrate communities, groups and individuals who are bearers of such knowledge into systems and programmes of disaster risk reduction, disaster recovery and climate change adaptation and mitigation" (Para. 191 (C.ii) OD).

Thus, the similarities between ICH and the environment are clear: both constitute exhaustible resources that need to be preserved for future generations[7] and both are the subject matter of fundamental human rights, namely, the right to culture and cultural diversity and the right to a safe environment and to health[8]. The 2003 Convention only safeguards ICH. ICH, however, includes natural elements, as highlighted in art. 2.1 of the 2003 Convention, according to which "intangible cultural heritage… is constantly recreated by communities and groups in response to their environment, their interaction with nature". Article 2.2(d), in addition, indicates that among the domains of ICH are those related to "knowledge and practices concerning nature". By safeguarding ICH, the 2003 Convention therefore also indirectly preserves the environment[9]. In this framework, the relationship

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[6] Intangible Cultural Heritage and Sustainable Development // UNESCO. Available at: https://ich.unesco.org/doc/src/34299-EN.pdf (accessed: 10.07.2019).

[7] *Blake J.* On Defining the Cultural Heritage // International and Comparative Law Quarterly. 2000. No. 49 (1). P. 80.

[8] *Zagato L.* La Convenzione sulla protezione del patrimonio culturale intangibile // Le identità culturali nei recenti strumenti UNESCO. Un approccio nuovo alla costruzione della pace? / ed. by L. Zagato. Padova: CEDAM, 2008. P. 63–66; *Blake J.* On Defining the Cultural Heritage. P. 80; *Pinton S.* La tutela della identità culturale a fronte dei cambiamenti climatici nel diritto internazionale // Le identità culturali nei recenti strumenti UNESCO… P. 123.

[9] *Marrie H.* The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage and the Protection and Maintenance of the Intangible Cultural Heritage of Indigenous Peoples // Intangible Heritage / eds L. Smith, N. Akagawa. Abingdon: Routledge. P. 183.

between ICH and the environment was correctly defined as one of the most "fundamental" aspects of ICH[10]. There are three typical situations that elucidate this relationship[11].

The first situation that highlights the relationship between ICH and the environment occurs when a balanced relationship between ICH and nature exists, so that by safeguarding the former the latter is also preserved and vice versa[12]. This situation of balance manifests itself in the framework of the Convention in two different ways.

First, nominations from States may emphasise the relationship between the element to be inscribed and nature. The element "Naadam, Mongolian traditional festival", nominated by Mongolia as a nationwide festivity that takes place in Mongolia every year in July, was described as involving a set of "rituals and customs" that "accentuate respect for nature and the environment"[13]. The element "Mediterranean Diet" is described as "a way of life guided by respect for diversity"[14]. Similarly, the element "Falconry, a living human heritage" nominated by Germany, Saudi Arabia, Austria, Belgium, United Arab Emirates, Spain, France, Hungary, Italy, Kazakhstan, Morocco, Mongolia, Pakistan, Portugal, Qatar, Syrian Arab Republic, Republic of Korea, and Czechia, is described as a practice "associated with nature conservation", where "falconers train, fly and breed birds of prey (which alongside falcons, includes birds such as eagles and hawks), developing a bond with them and becoming their main source of protection"[15]. Also, the practice is described as "providing a connection to the past, particularly for communities for which the practice is one of their few remaining links with their natural environment and traditional culture"[16].

Secondly, nominations of an element in the UNESCO Lists may highlight the obligation that the nominating States undertake to adopt measures to safeguard the nature and the proposed element. For instance, the element "Indonesian Angklung", nominated by Indonesia, is a musical instrument consisting of two to four bamboo tubes suspended in a bamboo frame, bound with rattan cords. Indonesia undertook to safeguard the cultivation and in general the culture related to the use of the bamboo wood[17]. Again, with regard to the element "Falconry, a living human heritage", its nominating States undertook to preserve falcons.

The second situation that highlights the relationship between ICH and the environment occurs when certain cultural traditions are incompatible with the protection of nature. This may happen for instance with regards to practices that are potentially destructive of animal and plant species, or to practices implying a "massive degradation of natural resources"[18]. The 2003 Convention establishes that "for the purposes of this Convention,

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[10] *Scovazzi T.* The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage // The Legal Protection of the Intangible Cultural Heritage / ed. by P. L. Petrillo. New York: Springer, 2019. P. 4.

[11] Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, Fifth session, Nairobi, Kenya, 15 to 19 November 2010. 5.COM. See: Chefs-d'oeuvre du patrimoine oral ei immatériel de l'humanité P. 20 // UNESCO. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000147344_fre (accessed: 10.07.2019); *Goswami R.* Knowledge and Change, the Intangible and Development. Available at: https://www.resilience.org/stories/2010-11-27/knowledge-and-change-intangible-and-development (accessed: 10.07.2019).

[12] *Goswami R.* Knowledge and Change, the Intangible and Development.

[13] Convention for the Safeguarding of Intangible Cultural Heritage, Fifth session, Nairobi, Kenya, 15 to 19 November 2010. 5.COM. 6.32. P. 37 // Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage. Available at: https://ich.unesco.org/doc/src/ITH-10-5.COM-CONF.202-Decisions-EN.doc (accessed: 09.04.2020).

[14] Ibid. 6.41. P. 45.

[15] Falconry, a living human heritage // UNESCO. Available at: https://ich.unesco.org/en/RL/falconry-a-living-human-heritage-01209 (accessed: 09.04.2020).

[16] Convention for the Safeguarding of Intangible Cultural Heritage, Fifth session, Nairobi, Kenya, 15 to 19 November 2010, 5.COM. 6.45. P. 37.

[17] Ibid.

[18] *Blake J.* On Defining the Cultural Heritage. P. 80.

consideration will be given solely to such intangible cultural heritage as is compatible with… the requirements of… sustainable development" (art. 2.1). In addition, the Convention recalls "existing international human rights" (preamble) and declares that it will safeguard ICH only when it is "compatible" with those rights (art. 2.1). It is apparent, that the right to a healthy environment constitutes a human right of a universal nature.

The third situation that highlights the relationship between ICH and the environment occurs in the opposite case, namely when natural phenomena may damage or prejudice ICH. For this reason, the Committee defined the urgent context that is necessary to have the Secretariat examine an international assistance request with priority[19]. This urgent context according to the Committee occurs when a State party cannot overcome alone an "insurmountable situation" which follows from "a calamity" or "a natural or environmental catastrophe"[20]. Similarly, the inscription of an element in the Urgent Safeguarding List is conditioned to the fulfilment of six fundamental criteria, among which the second concerns the risk of disappearance of the element consequent to relevant environmental transformations (Ch. (I.1 U.2(b)) OD). The following pages will further elaborate on the three-tiered framework in relation to environmental sustainability.

2. Intellectual property rights and environmental sustainability

The three pillars of the framework established by the Operational Directives for the Implementation of the Convention for the safeguarding of the Intangible Cultural Heritage relate to "environmental impacts in the safeguarding of intangible cultural heritage", communities as "the bearers of knowledge about nature and the universe and as essential actors in sustaining the environment" and "community-based resilience to natural disasters and climate change". These pillars provide vital conceptual frameworks for understanding the relationship between intangible cultural heritage and the environment, which will be explored in greater depth, with the aid of case studies, in this section.

The relationship between sustainability and intellectual property rights (IPRs) remains a source of academic discussion[21]. In relation to the sustainable development of ICH, IPRs are most commonly analysed with regard to economic sustainable development[22]. However, this paper seeks to address the implications of IPRs as safeguarding tools that contribute to environmental and social sustainability. It is undeniable that IPRs can pose risks for such sustainability. As the example of Bitto Cheese reveals, when GIs are registered without the participation of the whole ICH-practising community and when they are registered with specifications that do not accurately reflect ICH, such protection can be actively detrimental to the safeguarding and sustainability of ICH.

Bitto cheese has been produced since at least the 15th century and is a product of the Bitto Valleys in Valtelline (Sondrio province, Lombardy). In April 1995, Bitto cheese obtained

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[19] General information for the fifth session of the Committee // UNESCO. Available at: https://ich.unesco.org/en/general-information-00330 (accessed: 15.09.2019).

[20] Convention for the Safeguarding of Intangible Cultural Heritage, Fifth session, Nairobi, Kenya, 15 to 19 November 2010, 5.COM. 10.2. P. 37.

[21] Important works on this topic include: Cultural Heritage in the European Union: A Critical Inquiry into Law and Policy / eds A. Jakubowski, K. Hausler, F. Fiorentini. Brill: Leiden. 2019; *Martinet L.* Traditional Cultural Expressions and International Intellectual Property Law // International Journal of Legal Information. 2019. No. 47 (1). P. 6–12.

[22] A recent development of immense interest to those interested in the economic sustainable development of ICH is ongoing work by the Evaluation Body, which is currently working on the development of a guidance document on commercialization and the prevention of decontextualization of intangible cultural heritage. See Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage. Convention for the Safeguarding of Intangible Cultural Heritage, Fourteenth session, Bogotá, Colombia, December 9 to 14, 2019, 14.COM 10.

a PDO; as a result, the new Consortium of Valtellina Casera and Bitto was founded. The approved product specification introduced significant changes to traditional Bitto making processes. First, the PDO specification enlarged the production area to the entire Sondrio province, promoting the transfer of knowledge related to Bitto production to other areas of the province where Bitto-like cheese had never previously been produced. Second, the specification removed distinctions previously made between Bitto cheese and other cheeses from the province. Third, the production process mandated by the PDO specification did not require that the cheese must be produced in Alpine pastures during the Summer. Finally, the percentage of goat milk allowed was reduced from the traditional 20–30 to only 10 per cent, with an option of not using goat milk at all. The PDO specifications also permitted the use of animal fodder and enzymes and introduced various other provisions that overall represented a remarkable deviation from tradition. Rather than protecting Bitto cheese and the communities that had traditionally produced it, the PDO caused division, with some Bitto Valleys producers founding a Bitto Committee to safeguard the historical production method and area in 1994. Unable to use the Bitto name due to the presence of the PDO, producers making cheese according to traditional Bitto-making methods and located in the Bitto Valley were no longer allowed to use the Bitto name for their product. In the years since the registration of the PDO, there have been multiple conflicts between the PDO consortium and cheese producers from the Bitto Valley[23].

This paper, however, advances the argument that IPRs, particularly collective trademarks and geographical indications (GIs), can be an excellent tool for encouraging environmentally friendly practices in line with the first pillar, "environmental impacts in the safeguarding of intangible cultural heritage". This paper will focus its attention predominantly on GIs[24]. GIs can be environmentally friendly and compatible with the maintenance of biodiversity and landscape. Such GIs are referred to as "Green GIs"[25] and are considered capable of providing prospects for new forms of rural development, community autonomy, preservation of cultural traditions, and even conservation of biological diversity when the production of goods encourages the stewardship rather than the depletion of the natural resources from which they are made[26]. Indeed, it has been claimed that "sustainability is embedded in GI concepts", since GIs have a *terroir* component[27] (which is key to the preservation of local resources), allow collective governance and are a market tool combined with public goods[28].

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[23] For a full account of these conflicts, see: *Rinallo D., Pitardi V.* Open conflict as differentiation strategy in geographical indications: the Bitto Rebels case // British Food Journal. 2019. No. 121 (12). P. 3102–3118.

[24] Using the term "GI" as an umbrella both for GIs as a specific right and a category, including other quality schemes, such as "Protected Designation of Origin" or "Appellation of Origin". For more content on GIs and ICH, see: *Ubertazzi B.* EU Geographical Indications and Intangible Cultural Heritage // International Review of Intellectual Property and Competition Law (IIC). 2017. P. 1–26.

[25] *Ubertazzi B.* Sustainable development and Intellectual Property Rights: The case of Patachitra and GI. Available at: http://hipamsindia.org/sustainable-development-and-intellectual-property-rights-the-case-of-patachitra-and-gi (accessed: 18.02.2021).

[26] *Coombe R., Ives S., Huizenga D.* Geographical Indications: The Promise, Perils and Politics of Protecting Place-Based Products // The Sage Handbook of Intellectual Property / eds M. David, D. Halbert. London: Sage, 2014. P. 207.

[27] Defined as "the essential or exclusive relationship between a product and its place of origin due to the specificities of the local environment and/ or other natural characteristics [i. e. physical factors], and to the local know-how, [i. e. the human factor]. This combination of physical and human elements is known as *terroir*" (*Zappalaglio A., Guerrieri F., Carls S.* Sui Generis Geographical Indications for the Protection of Non-Agricultural Products in the EU: Can the Quality Schemes Fulfil the Task? // International Review of Intellectual Property and Competition Law. 2019. No. 51 (1). P. 35).

[28] *Samper L. F.* GIs, a strategic asset for sustainable development strategies, speaking at How GI strategies can help developing countries pursue sustainability objectives // oriGIn FAO Webinars. 2020.

With regard to terroir, GI products are the result of an interaction between the local environment and local wisdom: they combine a production area (reflecting the influence of the environment/climate on the product's development and characteristics) with the know-how of producers (such as techniques, traditional production methods and a connection to local wisdom and heritage). Thus a GI product is origin-linked, with a name and reputation associated to its origin[29]. The link between the environment and the product is therefore integral to the nature of a GI product and as such sustainability of the environment is paramount for the sustainability of the product.

Among the primary justifications for using IPRs on traditionally produced goods is that GI specifications (and trademarks regulations) can be environmentally friendly and compatible with the maintenance of biodiversity and landscape. These specifications can also be flexible to ensure that they can adapt to changing circumstances and conditions — "sustainability is a pathway and not a state"[30] and specifications must be flexible to avoid freezing and standardization of intangible cultural heritage and to remain responsive to a changing environment.

Geographical Indications are also important tools for ensuring sustainability for the environment and ICH because they are collective rights. As such, GIs have the ability to represent a large number of stakeholders in a territory, allowing a strong and representative GI governance to agree on priorities (bottom-up sustainability) and meaning that they can represent pride and identity in the territory. Thus, "GIs present long-term benefits as they create value, enhance the marketability of goods and give an edge to developing countries to promote exports and rural development, thus generating sustainability and inter-generational equity"[31]. Additionally, Green GIs enable producers to secure the premium prices, which may be grounded on the fact that the relevant specification requires that the traditionally produced goods at stake are free from contaminants, such as herbicides and pesticides.

An example of a "Green" EU GI specification is that of jersey royal potatoes, which indicates that "Growers stand their seed growing on the second shoot and by far the majority of the crop is planted by hand. While artificial fertilisers are used, locally collected seaweed is used extensively, not only does it provide an excellent source of organic fertiliser, the salt content of the seaweed it is believed does much to enhance the flavour"[32]. Similarly, the EU GI specification of "Diepholz Moor Lamb" indicates that "The Diepholzer moorland sheep eat heather, bent, cotton grass, sedge and various herbs and grasses; also pine, birch, frángula and other woody plants. By means of selective herding, the sheep are pastured mainly on land on which no mineral fertiliser or plant protection product has been applied. Intensive fattening is not desirable and is therefore avoided, although in winter their feed is supplemented with feed produced on the farm"[33]. In these examples of specifications, the capacity of GIs to recognize (and due to the nature of the GI itself, protect) positive environmental practices is evident. Although all three examples are GIs,

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Available at: https://www.origin-gi.com/content-page/item/15338-individual-webinars-programs.html (accessed: 18.02.2021).

[29] *Passeri S.* How GI strategies can help developing countries pursue sustainability objectives // oriGIn FAO Webinars. 2020. Available at: https://www.origin-gi.com/content-page/item/15338-individual-webinars-programs.html (accessed: 18.02.2021).

[30] *Samper L. F.* GIs, a strategic asset for sustainable development strategies…

[31] Ibid.

[32] Specifications for the Protected Geographical Indication Café de Colombia // European Commission. Available at: http://ec.europa.eu/agriculture/quality/door/documentDisplay.html?chkDocument=1619_1_en (accessed: 08.07.2019).

[33] Ibid.

other IPRs, including the regulations of collective trademarks, for instance, are equally capable of recognizing and protecting environmentally friendly practices.

Well-drafted IPRs can be flexible, combining traditional production methods with an environmental conscience, as shown by the EU GI specification of Cafe De Colombia, which indicates that "[t]here are two methods for removing the mucilage: fermentation and mechanical removal, which uses the 'Becolsub' machine, or environmentally-friendly wet-method processing of coffee. <…> The process… known as the environmentally-friendly or Becolsub process, created by Cenicafé and approved by the Federation following analyses of its impact on the quality of the coffee… consists of a similar wet process but considerably reduces the use of water, which is a scarce resource in some regions. Unlike the earlier method of removing mucilage by fermentation, here it is removed by the mucilage removal equipment designed by Cenicafé. Despite the fact that the environmentally-conscious method reduces water consumption it does not affect the characteristic quality of Café de Colombia"[34].

GIs also provide consumer confidence in the purity of traditional products, as well as in their traceability. Thus, while securing higher returns for producers, GIs play an important role in achieving rural development and the maintenance of rural landscapes. Even though environmental sustainability was not the primary aim of GIs development, given GIs "derive from local, including natural resources… environmental benefits are increasingly seen as a positive potential GI externality"[35]. One example of the benefits that can indirectly arise from GIs is revealed in empirical studies of the European olive oil industry. Characterized by the extensive use of GIs, studies have revealed that this industry is "a good example of agriculture with many associated positive environmental impacts such as lower rates of soil erosion, improved fire-risk control, water efficiency, lower pollution and higher levels of biodiversity and genetic diversity in olive-tree varieties"[36].

A further example of a GI that supports environmental sustainability can be seen in the Khao Hom Mali Thung Kula Rong-Hai Rice (Thailand) case study. In this case a GI was registered in April 2006. Since the registration of the GI, two environmental benefits have been noted: first, a reduction in transport — the GI is more sustainable than its reference product in terms of distance travelled (–65 %) rice seeds to milled rice distribution units and in terms of emissions released at the transportation stage (–10 %); and second, water footprint — less water is used for a higher output of the GI product[37]. Such environmental benefits, it has been noted, are consistent with Sustainable Development Goal 15 "Life on Land"[38].

In addition to recognizing and supporting positive environmental practices, the GI specification recognizes the community as bearers of knowledge about nature and essential actors in sustaining the environment. As such, the Indian GI specification of "Coorg Arabica Coffee" is an example of how IPRs can support the second pillar of the ODs, "knowledge and practices concerning nature and the universe". In particular, the specification indicates that the "modern method of cultivation in Coorg Coffee cultivation is an integral part of the lives of the people of Kodagu district and forms the backbone of the economy of the district till today. Increased productivity levels are achieved through the judicious management of resources and by taking advantage of favourable climatic conditions. The native method of cultivation is still followed but with the advent of new technology and

[34] Ibid.

[35] *Blakeney M. L.* Food Safety and Free Trade: Geographical Indications and Environmental Protection // Frontiers of Law in China. 2017. No. 12 (2). P. 162.

[36] Ibid. P. 167.

[37] *Napasintuwong O.* PGI Hom Mali Thung Kula Rong-Hai Rice in Thailand // Sustainability of European Food Quality Schemes / eds F. Arfini, V. Bellassen. New York: Springer, 2019. P. 87–109.

[38] See: *Passeri S.* How GI strategies can help developing countries pursue sustainability objectives.

improvement in agricultural science, few methods have been modernised. <…> Different soil management practices are also followed such as i) soil conservation measures, ii) soil moisture conservation measures and iii) drainage measures. Native methods like pruning, weeding and manuring is also followed for sustainable productivity of coffee"[39]. In addition, the specification highlights that "the coffee farmers growing Arabica and Robusta under shade trees provide ecosystem services through their farms and protect biodiversity. The shade also means that there is natural mulching from the leaves that fall onto the ground, which in turn helps avoid the use of strong fertilizers and pesticides"[40].

As this example shows, IPRs are capable of helping to protect the role of communities' knowledge and adaptation strategies. This knowledge and capacity to adapt often form the basis of communities' resilience in the face of natural catastrophes and climate change. As already mentioned, traditional communities typically manage local resources and the environment in a highly sustainable manner. They do so through the application of sophisticated resource management systems developed through knowledge of the natural environment. Such knowledge is to be intended as "a body of knowledge built by a group of people through generations living in close contact with nature. It includes a system of classification, a set of empirical observations about the local environment, and a system of self-management that governs resource use"[41]. For example, "the Turkana of northwestern Kenya have a highly sophisticated natural resource management system that has enabled them to survive in an environment that many would consider extremely hostile"[42]. "Indigenous and traditional groups empowered with rights, including IPRs, to control access to their lands and communities have a better chance of preventing misappropriation of their knowledge related to the sustainable use of the environment, and of negotiating favourable bioprospecting arrangements"[43].

A further example of how GIs can support environmental sustainability can be found in the work of the HIPAMS (Heritage Sensitive Intellectual Property and Marketing Strategies) India project[44]. The Indian GI for Bengal Patachitra illustrates how communities with an IPR that protects cultural practices can lead to positive environmental impacts. The word "patachitra" is derived from the Sanskrit term "patta" (cloth) and "chitra" (which means painting). It is practised in several regions of India, with specific Patachitra styles originating in West Bengal and Odisha. Traditionally, the paintings have depicted mytho-

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[39] Application for the Registration of Geographical Indication: Coorg Arabica // Indian Geographical Indications Registry. Available at: http://ipindiaservices.gov.in/GIRPublic/Application/Details/604 (accessed: 15.07.2019).

[40] Ibid. P. 8. Similarly, the EU GI specification for SIERRA DE MAGINA indicates that "los sistemas de no laboreo y semi-laboreo, suelen complementarse con técnicas de prevención de la erosión (pozas, ahoyado, aterrezado, albarradas, etc.)" (eAmbrosia — the EU geographical indications register // European Commission. Available at: http://ec.europa.eu/agriculture/quality/door/documentDisplay.html?chkDocument=3209_1_es (accessed: 9.07.2019)).

[41] *Johnson M.* Lore: Capturing Traditional Environmental Knowledge. Darby: Diane Publ., 1998. P. 3–20.

[42] *Dutfield G.* Harnessing Traditional Knowledge and Genetic Resources for Local Development and Trade. Available at: www.wipo.int/edocs/mdocs/mdocs/en/isipd_05/isipd_05_www_103975.pdf. P. 14 (accessed: 12.09.2019).

[43] Ibid. P. 18.

[44] The purpose of the HIPAMS project is to "investigate how developing 'heritage-sensitive' IP protection strategies can give communities greater control over the commercialisation of their heritage while contributing to its safeguarding and on-going viability". More information about the project can be found at: Heritage Sensitive Intellectual Property & Marketing Strategies. About. Available at: http://hipamsindia.org/about (accessed: 12.04.2020). The project has produced toolkits to support the implementation of heritage-sensitive IP and marketing strategies, which can be accessed: at: Heritage Sensitive Intellectual Property & Marketing Strategies. Toolkits. Available at: http://hipamsindia.org/research-output/toolkits (accessed: 12.04.2020).

logical stories[45]. The precise nature of this "cloth painting" is set out in greater detail in the GI specification. Colour is a key quality of Bengal Patachitra that is recognized in the specification, which states that "Five basic pigments — White (Sankha), Yellow (Hingula), Black (Kala), Brown (Khayeri), Indigo (Neela) and their combinations are used for colouring"[46]. As the specification goes on to note, "the materials used in the paint are from vegetable, earth and mineral sources"[47]. Traditional, environmentally-friendly paint is, therefore, an integral part of this practice. By stating that Bengal Patachitra must be made using materials sourced in this way the GI recognizes the patachitra community's knowledge regarding environmentally-sourced paints.

GIs can be used as a tool for the organization and promotion of agricultural value chains. They can create incomes for farmers and other stakeholders in the value chain, such as small processing units and petty traders, and therefore help them to face food lean periods and food and nutrition insecurity. An example of the value of GIs for the sustainability of value chains is "Ariljska malina". In this case study, a PDO was registered in relation to raspberries grown in the fields of Arilje. This PDO has had benefits for all levels of the production chain. For producers, benefits included (i) Certification costs were covered by the processors (ii) The processors (Drenovac, Nectar and other cooling chambers involved) helped stabilize the production process and ensure market outlets, especially in insecure years (iii) Producers were supported to ensure sustainability of production and resources by introducing other voluntary standards (GlobalGAP, organic, etc.; these standards are not compulsory for the PDO Ariljeraspberry, but some producers choose to have them) (iv) In 2020 there were no major losses for producers[48]. For processors, positives of PDO certification have included: (i) developing new final products with added value — made of PDO Arilje raspberry (ii) some products increased sales over 30 % when compared to the similar product in the domestic market (raspberries juice) (iii) during the COVID-19 crisis, Arilje raspberries did not have any losses, and sold for good prices. And finally, for consumers, benefits of the PDO have included (i) In Serbia higher visibility of GI products thanks to final products and labelling of Arilje raspberries at retailer store (ii) Increased interest for "home made" products, and direct linkages with producers (Association of GI products)[49].

IPRs are also capable of safeguarding ICH in a way that both supports environmental sustainability and is socially inclusive, provided there is a clear framework and vision for the use of IPRs. An example of this relates to the prospective ICH element, "Alpine Food Heritage — Community knowledge, skills, practices and values". Work on an application to nominate this multinational[50] element is currently underway and is the legacy of the European Union funded project "AlpFoodway — a cross-disciplinary, transnational and participative approach to Alpine food cultural heritage" (2016–2019). The Alpfoodway project created a sustainable development model for mountain areas based on the preservation and valorization of Alpine Space cultural food heritage and fostered the creation of a transnational alpine identity based on the common cultural values expressed in food

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[45] Medinipur Patachitra // Heritage-sensitive Intellectual Property & Marketing Strategies. 2020. Available at: http://hipamsindia.org/community/medinipur-patachitra-2 (accessed: 12.04.2020).

[46] Bengal Patachitra // Geographical Indications Registry. 2016. Available at: http://ipindiaservices.gov.in/GirPublic/Application/Details/564 (accessed: 12.02.2020).

[47] Ibid.

[48] *Obradovic A.* "PDO Ariljska malina" — basis for sustainability and value chain players // Association "Ariljska malina" Organisation for PDO management. 2020. Available at: http://www.drenovac.co.rs/img/geo/presentation_eng.pdf (accessed: 26.06.2021).

[49] Ibid.

[50] The countries engaged in this application are: France, Italy, Switzerland, Austria, Germany and Slovenia.

heritage. Ultimately, the results of the project have benefitted heritage communities, local development professionals and organizations, cultural institutions, local, regional and national authorities, as well as enhancing protection and conservation of the Alpine Space.

In the context of IPRs that support environmental and social sustainability, one document produced by the AlpFoodway project that is of significance is the AlpFoodway Vision Paper. which seeks to provide a vision for the sustainable development of Alpine Food Heritage. One of the Vision Paper's aims is to "establish legal frameworks and safeguarding measures, including Intellectual Property Rights, to protect the Alpine Food Heritage and facilitate prospering of the communities concerned"[51]. As part of the explanation of the legal framework, the Vision Paper highlights "Tome des Bauges cheese-making" as an example of best practice. A traditional family cheese in the Massif des Bauges since at least the 17th Century, in 2002, the Tome obtained a French Controlled Designation of Origin (CDO) after years of work towards this goal by the SITOB (Syndicat Interprofessionnel de la Tome des Bauges), who worked alongside producers and the National Institute of the Designation of Origin in securing the CDO. In 2017, the SITOB also registered an EU protected designation of origin (PDO) on the Tome. In its analysis of the 2017 PDO, the Vision Paper indicates the significance that IPRs can have for communities and facilitating sustainable social development: "The PDO is… contributing to safeguarding the element and facilitates the reconciliation of the needs of modern production with those of an ancient and well-rooted tradition with a socially… sustainable development approach"[52].

The PDO specification favours practices aimed at protecting the biodiversity of pastures, supporting the conservation and management of grasslands of high floristic diversity with positive effects on animal health, milk quality and cheese taste, as well as landscape quality[53]. The PDO is the result of the enduring collective awareness and inclusive active participation of community members. This inclusive approach in the development of IPRs protection also allows the production of cheese to take place directly in the mountain pastures. Today this cheese-production practice is in decline, but it remains strongly linked to the sense of identity of a significant part of the pastoral community. The PDO is therefore contributing to safeguarding the element and facilitates the reconciliation of the needs of modern production with those of an ancient and well-rooted tradition with a socially, environmentally and economically sustainable development approach.

A second example of a best practice highlighted by the Vision Paper is that of "Mountain cheese producers in Allgäu". The association representing most community members in Allgäu is the "Alpwirtschaftlicher Verein im Allgäu e. V." (mountain farming association in the Allgäu region). The association includes herdsmen, members of the cooperatives, owners and tenants. It was founded in 1952 and represents an active community which assembles a few times each year for central events like the mountain cheese makers course and a mountain cheese award ceremony, where the cheese of up to 53 alpine pastures is presented. The Alpwirtschaftlichen Vereins im Allgäu, registered an EU PDO on the Allgäuer Sennalpkäse' cheese in 2016. The product specification contains several regulations regarding the locality and production techniques[54]. This PDO was developed in an inclusive way, with the active participation of the community. The PDO is used by certain community members in association with a certified organic "bio" label. Thus, protection and promotion measures are effectively combined.

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[51] Vision Paper and Alpine Food Heritage Charter // Interreg Alpine Space. Available at: http://www.alpine-space.eu/projects/alpfoodway/project-results/wp4_o.t4.2_31.1_charter_visionpaper.pdf (accessed: 03.04.2020).

[52] Ibid. P. 37.

[53] Tome Des Bauges, EC No. FR/PDO/005/0254, 18.09.2002, Art. 4.6.

[54] Allgäuer Sennalpkäse, EU No: DE/PDO/0005/0897, 11.10.2011, Arts. 3 and 5.

In addition to highlighting the ways in which IPRs are already supporting the social and environmental sustainability of Alpine food heritage, a further important aspect of the Vision Paper, and one that is of particular relevance to this paper, was that it established guidelines for the future implementation of any additional IPRs. The guidelines for "Tome des Bauges cheese-making" set out that: "In line with inclusive social development of ICH, IPRs should lead to collective proprietarization of culture, contributing to inclusive social protection systems, multilevel governance systems and freedom of community. IPRs must allow bearers to choose their own value system. The development of IPRs governance systems will therefore favour engaging and empowering communities, and consequently fostered social equities and local capacity building… IPRs specifications and regulations should be drafted taking into account the need to grant to all local producers the possibility to amend them. If constant change is not foreseen and allowed to all community members, inappropriate standardization of production methods could arise… [and] IPRs adopted to protect ICH shall be capable of assuring environmental sustainable development, protecting biodiversity and preventing natural catastrophes"[55].

The AlpFoodway Project, and in particular the case studies of "Tome des Bauges cheese-making" and "Mountain cheese producers in Allgäu", therefore demonstrates how intellectual property rights can support and facilitate socially inclusive environmental sustainability, empowering communities and placing them at the core of efforts to safeguard heritage.

Looking forward, the future for safeguarding both the environment and cultural heritage at the European level has been supported by the European Parliament resolution of 15 January 2020 on the European Green Deal[56]. The Green Deal advocates a fundamental right to a clean and sustainable environment and to a stable climate for all people living in Europe and which has significant cultural dimensions, from circular economy to building renovation, to biodiversity; cultural heritage offers immense potential to support these environmental aims, drive climate action and support a just transition to a low carbon, climate resilient future[57]. It is to be hoped, therefore, that the Green Deal will lead to support for further future initiatives for safeguarding cultural heritage and the environment that can learn from and build upon the approach to safeguarding (including the carefully planned use of IPRs) adopted by the AlpFoodway project.

Conclusions

The framework established by Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage demonstrates the relationship between ICH and environmental sustainability. The first pillar relates to "environmental impacts in the safeguarding of intangible cultural heritage". The second pillar relates to "knowledge and practices concerning nature and the universe". The final pillar concerns "community-based resilience to natural disasters and climate change". This paper has advanced the argument that, in line with the first and second pillar, intellectual property rights, particularly geographical indications, CAN support environmentally friendly practices and recognise communities as bearers of knowledge about nature and essential actors in sustaining the environment. In order to do so, such intellectual prop-

[55] Alpfoodway internal document seen by the author.

[56] European Parliament resolution of 15 January 2020 on the European Green Deal. (2019/2956(RSP)) // European Parliament. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0005_EN.html (accessed: 18.02.2021).

[57] Cultural Heritage and the EU Green Deal // European Investment Bank. Available at: https://institute.eib.org/2020/11/cultural-heritage-and-the-eu-green-deal/ (accessed: 18.02.2021).

erty rights must be conscious of the risks they can pose. But, as this paper has sought to argue, intellectual property rights can be an invaluable safeguarding mechanism, capable of supporting the sustainability of both intangible cultural heritage and the environment.

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Конвенция об охране нематериального культурного наследия принята ЮНЕСКО в октябре 2003 г. Статья 2 Конвенции устанавливает, что нематериальное культурное наследие должно быть совместимо с устойчивым развитием. В области культуры устойчивое развитие состоит из трех взаимосвязанных аспектов: общества, окружающей среды и экономики. Глава 6 Оперативных директив по имплементации Конвенции устанавливает рамки, связанные с «экологической устойчивостью». Структурно Конвенция подразделяется на три важнейшие составляющие. Первая из них связана с «воздействием на окружающую среду при сохранении нематериального культурного наследия», вторая относится к «знаниям и практикам, касающимся природы и Вселенной», последняя касается «устойчивости общин к стихийным бедствиям и изменению климата». На основе анализа Конвенции, Оперативных директив по имплементации Конвенции и элементов нематериального культурного наследия, включенных в Репрезентативный список Конвенции, в статье представлены тематические исследования, в которых, в соответствии с вышеупомянутыми структурными принципами Конвенции, права интеллектуальной собственности, особенно права на географические указания, применяются для поддержания экологически чистой практики использования материальных благ. В статье доказывается, что признание за локальными сообществами указанного права интеллектуальной собственности может означать их признание носителями знаний о природе в качестве основных участников поддержания равновесия окружающей среды. Высказано предположение о том, что, хотя концепции права интеллектуальной собственности, если они недостаточно разработаны, могут представлять риски для экологической устойчивости, при правильном восприятии они способны расширять возможности общин. Таким образом, цель данной работы состоит в том, чтобы показать, каким образом права интеллектуальной собственности могут быть инструментами содействия охране и устойчивости как нематериального культурного наследия, так и окружающей среды.

Ключевые слова: культурное наследие, экологическая устойчивость, права интеллектуальной собственности, ЮНЕСКО, Международная конвенция об охране нематериального культурного наследия, нематериальное культурное наследие, община.

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